

Message Text

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ACTION DLOS-09

INFO OCT-01 EUR-12 ISO-00 ACDA-07 AID-05 CEA-01 CEQ-01

CG-00 CIAE-00 EPG-02 COME-00 DODE-00 DOTE-00

EB-07 EPA-01 ERDA-05 FMC-01 TRSE-00 H-01 INR-07

INT-05 IO-13 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01

OES-07 OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15

USIA-06 AGR-05 FEA-01 /130 W

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R 131730Z MAY 77

FM USMISSION EC BRUSSELS

TO SECSTATE WASHDC 3805

INFO ALL EC CAPITALS

USUN NEW YORK 1488

LIMITED OFFICIAL USE SECTION 1 OF 2 EC BRUSSELS 4900

E.O. 11652: N/A

TAGS: PLOS, EEC

SUBJECT: UNCLOS SESSION

REF: (A) ECA-194, (B) 76 ECA-283 OF JUNE 16, (C) 76 EC BRUSSELS
5735, (D) EC BRUSSELS 808

1. SUMMARY: AN EC COMMISSION COMMUNICATION TO THE EC
COUNCIL ON THE LAW OF THE SEA RECOMMENDS ADOPTION OF COMMON
EC POSITIONS FOR THE FORTHCOMING UNCLOS SESSION AND PROPOSES

A SERIES OF "GUIDELINES" AS WELL AS RECOMMENDATIONS
FOR PROCEDURES TO ASSURE EC COORDINATION. THE COMMUNICATION
NOTES THAT IT IS "PROBABLY" IN THE INTEREST OF THE
DEVELOPED COUNTRIES TO PREVENT FAILURE OF UNCLOS EVEN
THOUGH UNILATERAL ACTION COULD PROBABLY ACHIEVE SOME OF THE SAME
RESULTS AT PROBABLY LESS COST TO THE DCS. AN EC COMMISSION
SOURCE DOUBTS THAT THE COUNCIL WILL ADOPT ANY OF
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THE GUIDELINES OR GIVE SERIOUS CONSIDERATION TO THE
COMMUNICATION OTHER THAN TO TAKE NOTE OF ITS EXISTENCE
AND AGREE TO THE NEED FOR EC COORDINATION. END SUMMARY.

2. THE EC COMMISSION HAS SUBMITTED A LONG COMMUNICATION
TO THE EC COUNCIL IN PREPARATION FOR THE SIXTH SESSION OF
THE UN CONFERENCE ON THE LAW OF THE SEA (UNCLOS) WHICH

OPENS IN NEW YORK ON MAY 23 (COPY POUCHED TO ALL ADDRESSES ON MAY 6, REF A). THIS COMMUNICATION, WHICH IS SIMILAR IN CONTENT AND FORM TO THAT SUBMITTED IN JUNE 1976 (REFS B AND C), REVIEWS THE DEVELOPMENTS, INCLUDING THE FIFTH UNCLOS SESSION, EXTENSION BY MANY COUNTRIES (INCLUDING EC MEMBER STATES) OF FISHING OR ECONOMIC ZONES TO 200 MILES, THE BRUSSELS MEETING WITH ACP STATES IN FEBRUARY ON EXPLOITATION OF THE SEABEDS, AND THE "EVENSEN GROUP" MEETING IN GENEVA IN MARCH. IT ASSESSES THE STATUS OF THE PROPOSED CONVENTION BY MAJOR TOPICS AND ASKS THE COUNCIL TO ADOPT PROPOSED "GUIDELINES" FOR A COMMON COMMUNITY POSITION ON THE MAJOR OUTSTANDING QUESTIONS BEFORE MAY 23.

3. THE COMMUNICATION NOTES THAT THE COUNCIL PRESIDENCY COUNTRY IN 1976 (THE NETHERLANDS) WROTE TO THE PRESIDENT OF UNCLOS EXPLAINING WHY AN EEC CLAUSE IN THE CONVENTION IS NECESSARY AND PROPOSING THE TEXT OF SUCH A CLAUSE. THE COMMUNICATION FURTHER SUGGESTS THAT THE EEC CLAUSE SHOULD GIVE THE COMMUNITY PER SE MEMBERSHIP IN THE INTERNATIONAL SEABED AUTHORITY AND IN THE ASSEMBLY, AND AUTHORITY TO REPRESENT THE NINE MEMBER STATES IN THE COUNCIL OF THE AUTHORITY.

4. THE COMMISSION IN THE COMMUNICATION STRESSES THE IMPORTANCE TO EC INTERESTS AND TO CONCLUSION OF AN ACCEPTABLE LOS CONVENTION OF A COMMON COMMUNITY STAND AND STATES THAT THE "COMMUNITY MUST ADOPT COMMON POSITIONS ON THE MAIN PROBLEMS STILL UNRESOLVED AND PUT THEM LIMITED OFFICIAL USE

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FORWARD AS SUCH AT THE CONFERENCE." IN ADDITION TO COUNCIL APPROVAL OF THE GUIDELINES, THE COMMISSION CALLS FOR "ON-THE-SPOT" COORDINATION AND ASKS THE MEMBER STATES "IN ALL CASES TO STICK TO THE PRESENTATION OF AGREED POSITIONS AND, IF NECESSARY, TO AVOID ADOPTING POSITIONS UNILATERALLY." POSITIONS ON ISSUES WHERE THE COMMUNITY IS COMPETENT "MUST BE PUT FORWARD THROUGH THE COMMISSION REPRESENTATIVE." DESPITE THIS CALL FOR COMMON STAND, HOWEVER, THE COMMUNICATION NOTES THAT THERE REMAIN DIFFERENCES BETWEEN MEMBER STATES ON SOME ISSUES, SUCH AS SEA BED MINING WHERE SOME MEMBER STATES "SEE THEMSELVES AS POTENTIAL OPERATORS", AND OTHERS DO NOT. ANOTHER EXAMPLE OF DIFFERENCES BETWEEN MEMBER STATES CITED IS IN REGARD TO MARINE SCIENTIFIC RESEARCH, WHERE FRANCE FAVORS A "CONSENT REGIME" BUT THE UK, THE FRG AND NETHERLANDS WANT FULL FREEDOM FOR RESEARCH.

5. THE FOLLOWING IS A SUMMARY OF THE PRINCIPAL GUIDE

LINES BY MAIN TOPIC PROPOSED BY THE COMMISSION IN THE

COMMUNICATION. WE RECOGNIZE THAT A FEW OF THESE MAY

CONFLICT WITH US POSITIONS:

A. THE INTERNATIONAL SEA-BED AREA
--RETAIN THE "PARALLEL SYSTEM," POSSIBLY ACCOMPANIED
BY ACCEPTANCE OF THE US PROPOSED "BANKING SYSTEM";
--ESTABLISH NEGOTIATING CONDITIONS BETWEEN THE
AUTHORITY AND MINING OPERATORS (STATE AND PRIVATE) ON
COMMERCIAL AND NON-DISCRIMINATORY BASES;
--EXCLUDE ANY SPECIAL TREATMENT FOR THE ENTERPRISE
AND GUARANTEE ACCEPTABLE ECONOMIC TERMS TO ALL MINING FIRMS;
--OPPOSE ANY AMENDMENTS TO MAKE THE REVISED NEGOTIATING
SINGLE TEXT (RSNT) RESOURCES POLICY MORE RESTRICTIVE;
--ADOPT AN OPEN ATTITUDE ON THE RATE OF INCREASE OF
SEA BED PRODUCTION;
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--OPPOSE FREQUENT PERIODIC REVIEWS OF THE SEA BED
REGIME (PART I OF THE RSNT);
--ACCEPT THE CONVOCAION OF A REVIEW CONFERENCE
AFTER 25 YEARS OF COMMERCIAL EXPLOITATION BUT
PRESERVE THE SANCTITY OF CONTRACTS ALREADY IN FORCE.
--DEFINE VOTING PROCEDURES FOR THE REVIEW
CONFERENCE TO PROTECT INTERESTS OF ALL GROUPS.
--DEVELOP COMMON EC POSITIONS WITH REGARD TO THE
FINANCING OF THE ENTERPRISE. (THOSE ADVANCED BY
AMBASSADOR RICHARDSON AT THE EVENSEN GROUP MEETING MAY
BE TOO RESTRICTIVE.)
--ACCEPT A VOTING SYSTEM IN THE COUNCIL OF THE
AUTHORITY WEIGHTED ON THE BASIS OF IMPORTS OR
CONSUMPTION.
--MAINTAIN THE FORMER EC POSITION ON THE NEED FOR
SOLUTIONS TO AVOID THE EMERGENCE OF MONOPOLY SITUATIONS
OR DOMINANT POSITIONS FOR SEA BED MINING.

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B. THE ECONOMIC ZONE AND THE CONTINENTAL SHELF

--ACCEPT MODIFICATION TO STRENGTHEN THE SUI
GENERIS NATURE OF THE ECONOMIC ZONE.
--REVIEW EARLIER EC-PROPOSED AMENDMENTS REGARDING
PROVISIONS FOR BIOLOGICAL RESOURCES OF THE SEA IN THE
LIGHT OF EC POSITIONS DURING CURRENT BILATERAL FISHERY
NEGOTIATIONS.

--PREPARE A COMMON EC DEFINITION OF THE MARGIN
OF THE CONTINENTAL SHELF OUTSIDE 200 MILES "BASED ON
THE IRISH PROPOSAL."

--ACCEPT A REASONABLE SYSTEM FOR SHARING INCOME
FROM CONTINENTAL SHELF EXPLOITATION BEYOND 200 MILES,
PROVIDED IT DOES NOT HAMPER SUCH EXPLOITATION.

--ALLOCATE THE BULK OF SHARES INCOME TO THE LEAST
DEVELOPED LANDLOCKED AND GEOGRAPHICALLY DISADVANTAGED
AND GIVE THE AUTHORITY A ROLE IN THE DISTRIBUTION OF
THESE FUNDS.

C. PROTECTION OF THE MARINE ENVIRONMENT

--SUPPORT PROPOSALS PERMITTING COASTAL STATES TO
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CONTROL THE DUMPING OF WASTE IN TERRITORIAL SEAS AND
IN ECONOMIC ZONES WITHOUT PREJUDICING FREEDOM OF
NAVIGATION.

--OPPOSE PROPOSALS PERMITTING THE TRANSFORMATION
OF ECONOMIC ZONES INTO SPECIAL ZONES FOR ENVIRONMENTAL
PURPOSES.

--ACCEPT THE RIGHT OF COASTAL STATES TO INTERVENE
IN THE EVENT OF A FLAGRANT VIOLATION BY A VESSEL OF
INTERNATIONAL RULES, PROVIDED THAT FREEDOM OF NAVIGATION IS
GUARANTEED.

D. MARINE SCIENTIFIC RESEARCH

--SUPPORT PROPOSALS TO SAFEGUARD STATES UNDERTAKING
MARINE SCIENTIFIC RESEARCH.

--MAINTAIN THE IDEA OF "TACIT CONSENT" IN ORDER
TO MINIMIZE CUMBERSOME PROCEDURES WHICH MIGHT OBSTRUCT
MARINE SCIENTIFIC RESEARCH.

--PRESS FOR RAPID PROCEDURES FOR THE SETTLEMENT
OF DISPUTES IN MARINE SCIENTIFIC RESEARCH.

--SUPPORT THE TRANSFER OF MARINE TECHNOLOGY TO
THE LDCS.

E. SETTLEMENT OF DISPUTES

--SUPPORT A SYSTEM FOR THE COMPULSORY SETTLEMENT OF
DISPUTES, INCLUDING ARBITRATION WHEN SELECTED BY ONE OF
THE PARTIES TO A DISPUTE.

6. IN A CONVERSATION WITH A MISSION OFFICER, MICHAEL
HARDY, EC COMMISSION LEGAL ADVISER WHO IS A SENIOR
MEMBER OF THE COMMISSION'S LOS DELEGATION AND WAS
RESPONSIBLE FOR PREPARING THE PRESENT COMMUNICATION,
MADE A GENERAL COMMENT THAT WHILE THERE WOULD PROBABLY
BE SOME PROGRESS DURING THE NEXT SESSION HE THOUGHT
IT MOST UNLIKELY THAT FULL AGREEMENT ON A CONVENTION
WOULD BE ACHIEVED. HE ALSO TOLD US THAT HE DOUBTED
VERY MUCH THAT THE COUNCIL WILL DO MORE THAT TAKE NOTE
OF THE COMMISSION'S REPORT AND PROPOSALS AND ISSUE A
RHETORICAL CALL FOR INCREASED EC COORDINATION ON
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LOS MATTERS. THE COUNCIL WOULD PROBABLY NOT TRY TO TAKE
A POSITION ON THE PROPOSED GUIDELINES FOR A NUMBER OF
REASONS. THERE IS SIMPLY NOT ENOUGH TIME BEFORE
MAY 23 FOR SERIOUS COUNCIL CONSIDERATION OF THE MANY
PROPOSALS AND ADOPTIONG OF COMMON POSITIONS ON
THOSE WHERE INTERESTS OF THE MEMBER STATES DO NOT
COINCIDE. FURTHERMORE, HARDY SAID, MEMBER STATES
APPEAR TO ATTACH LESS URGENCY NOW TO REACHING AGREEMENT ON
A CONVENTION SINCE, IN THE IMPORTANT AREA OF
RESOURCE DEVELOPMENT BY COASTAL STATES, MANY COUNTRIES
HAVE ADOPTED UNILATERALLY 200- MILE ECONOMIC OR FISHERY
ZONES OR ARE IN THE PROCESS OF DOING SO WITHOUT THE
BENEFIT OF A LOS CONVENTION.

7. THE COMMISSION IN ITS COMMUNICATION TO THE COUNCIL
ALSO NOTES THAT, WHILE THE ABSENCE OF A
CONVENTION MAY LEAD TO REGRETTABLE UNCERTAINTY AND
ABSENCE OF RESTRAINTS IN REGARD TO OFFSHORE ZONES,
IT IS "LESS EVIDENT THAT CERTAIN OTHER MAJOR PROVISIONS
OF THE RSNT NECESSARILY HAVE TO BE ENSHRINED IN THE
FORM OF AN INTERNATIONAL CONVENTION SINCE STATE
PRACTICE COULD ACHIEVE THE SAME RESULT, OR EVEN
ACHIEVE RESULTS THAT WERE MORE ADVANTAGEOUS FOR THE
COMMUNITY." ACCORDING TO THE COMMUNICATION, THIS
COULD BE THE CASE FOR CONTROL OVER FISHERY RESOURCES

AS WELL AS FOR CONTINUED APPLICATION OF THE 1958
CONTINENTAL SHELF CONVENTION (WHICH DOES NOT IMPOSE
A REVENUE-SHARING FORMULA) AND FOR EXPLOITATION OF THE
DEEP SEA BEDS. AFTER MAKING THESE NEGATIVE POINTS,
HOWEVER, THE COMMUNICATION STRESSES THAT "ON BALANCE"
THE EC AND OTHER DEVELOPED COUNTRIES "PROBABLY HAVE
AN INTEREST IN PREVENTING FAILURE OF THE CONFERENCE"
AND IN "CONTINUING TO WORK TOWARD A CONVENTION."

8. COMMENT: IF, AS SEEMS LIKELY, HARDY'S VIEWS
REFLECT THE OPINION OF OTHER COMMISSION AND MEMBER
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STATE OFFICIALS CONCERNED WITH LOS MATTERS, THIS WOULD
REINFORCE OUR RECOMMENDATION IN REF D TO ASSIGN MORE
PRIORITY TO INFLUENCING THE EC ON LOS MATTERS. WE WOULD
APPRECIATE COMMENTS AND GUIDANCE ON POINTS NOTED ABOVE
FOR USE WITH COMMISSION AND PERM REPS.HINTON

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Message Attributes

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To: STATE
Type: TE
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